

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION**

AGRIGENETICS, INC. d/b/a MYCOGEN SEEDS,	)	
	)	
	)	
Plaintiff,	)	Case No. 1:08-cv-0802-TWP-TAB
	)	
vs.	)	
	)	
PIONEER HI-BRED INTERNATIONAL, INC.,	)	
	)	
	)	
Defendant.	)	
	)	

**MOTION TO COMPEL TRIAL DEPOSITIONS OF MESSRS. BART BAUDLER  
AND ALAN MCCUNN**

Agrigenetics Inc. d/b/a Mycogen Seeds (“Mycogen”) hereby submits this Motion to Compel the Trial Depositions of Mr. Bart Baudler and Mr. Alan McCunn, two employees of Pioneer Hi-Bred International, Inc. (“Pioneer”). In support thereof, Mycogen states as follows:

1. The trial deposition is an accepted practice in this jurisdiction and justified as a means of preserving testimony for trial of persons who lie outside the subpoena power of this Court.

2. Pioneer opposes Mycogen’s attempt to take the trial depositions of Messrs. Baudler and McCunn for no other reason than that Mycogen could have taken discovery depositions of them. Ex. 1.<sup>1</sup> In opposing these depositions, Pioneer ignores well-established law in this jurisdiction. *Spangler v. Sears, Roebuck & Co.*, 138 F.R.D. 122 (S.D. Ind. 1991).

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<sup>1</sup> Exhibits referenced in this motion are attached to the Memorandum in Support of Mycogen’s Motion to Compel Trial Depositions of Messrs. Bart Baudler and Alan McCunn.

3. Mycogen cannot compel the appearance of Messrs. Baudler and McCunn for trial in this matter because they lie outside the subpoena power of this Court and so seek their trial depositions.

4. It would be prejudicial to Mycogen not to allow Mycogen to preserve the testimony of these witnesses, both of whom were intimately involved in the PROaccess business strategy that Mycogen alleges violates its contract rights. Mycogen should not be prevented from preserving the testimony of two witnesses whose presence cannot be compelled and yet who played a strategic role in the development and implementation of the PROaccess strategy.

5. There is no prejudice to Pioneer if this Court allows Mycogen to take these two depositions. There is still ample time before trial and for both parties otherwise to prepare their cases.

WHEREAS, Mycogen respectfully requests that its Motion to Compel the Trial Depositions of Messrs. Bart Baudler and Alan McCunn be granted, and for all just and proper relief.

Respectfully submitted,

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(formerly d/b/a Mycogen Plant Sciences)

### **CERTIFICATE OF SERVICE**

I hereby certify that on October 22, 2010 a copy of the foregoing was filed electronically.

Notice of this filing will be sent to the following parties by operation of the Court's CM/ECF system.

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*/s/ Deborah Pollack-Milgate*